

**DRAFT**

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**Telecommunications Division  
Market Structure Branch**

**RESOLUTION T-16679  
August 22, 2002**

**RESOLUTION**

RESOLUTION T-16679. PACIFIC BELL. (U-1001-C). ORDER  
ACCEPTING, SUBJECT TO ANY ADJUSTMENTS RESULTING FROM  
THE NRF AUDIT, PACIFIC BELL'S ANNUAL RATE OF RETURN  
ADVICE LETTER FILING IN COMPLIANCE WITH DECISION 98-10-  
026.

BY ADVICE LETTERS NO. 22800, AND 22800A FILED ON April 2, 2002.

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**SUMMARY**

This Resolution accepts Pacific Bell's (Pacific) annual rate of return advice letter(AL) filing subject to any corrections or adjustments that may be appropriate as a result of any Commission decision.

Since sharing has been suspended in Decision (D.) 98-10-026, there is no impact on rates as a result of this filing.

**BACKGROUND**

**New Regulatory Framework (NRF)**

Decision 98-10-026, resulting from the third triennial NRF review, adopted the suspension of sharing effective January 1, 1999, continued the requirement for the reporting of rates of return, phased out existing Z factor adjustments and eliminated new Z factor adjustments, and included a provision for the consideration of only a very limited set of exogenous costs, and the continued rate caps and floors.

### **PACIFIC'S ANNUAL RATE OF RETURN FILING**

Pursuant to D. 98-10-026 Pacific filed its Annual Rate of Return AL, which is to be filed every April 1 for the purpose of reporting its actual rate of return, and the market-based, benchmark, ceiling, and floor rates of return last found reasonable. Pacific reported an annual rate of return (ROR) for the year 2001 of 12.48%. Pacific filed a supplemental AL no. 22800A on June 13, 2002, which restated the ROR as 12.55%. Other references reported in Pacific's filing included the following rates of return:

Market-Based	10.00%
Benchmark	11.50%
Ceiling	15.00%
Floor	6.75%

### **NOTICE/PROTESTS**

Pacific states that a copy of AL 22800 had been mailed to competing and adjacent utilities and/or other utilities and interested parties as requested. Notice of Advice Letter No.22800 was noticed in the Commission's Daily Calendar of April 5, 2002.

The Commission's Office of Ratepayer Advocates (ORA) filed a timely protest to AL 22800 on April 8, 2002. ORA asserts that a determination of Pacific's actual ROR would be premature without ORA's analysis of supporting workpapers, or without an audit of the 2001 ROR. ORA further contends that the Commission should direct an audit of Pacific's 2001 ROR, lift the suspension of sharing, and create a memorandum account to book earnings above the sharing band that will be subject to refund. ORA states that doing so would protect ratepayer and public interest. Finally ORA asks that Pacific be required to refile this AL after the Commission concludes its findings of the audits and prescribes corrective measures in OIL 01-09-002

Pacific Bell filed a timely response to ORA's protest on April 16, 2002. Pacific Bell contends that the AL filing is not premature as the Commission ordered them to submit a ROR AL by April 1 of each year in D.98-10-026. Pacific stated that possible commission findings due to the NRF audit are not valid basis for rejecting the AL, as they are separate proceedings. Pacific also asks that ORA's request for an immediate audit be rejected, as there is no legitimate basis for such an order. Finally, Pacific asks that ORA's request to immediately lift the suspension of sharing because doing so

would predetermine an issue the Commission will address in Phase 3 of the NRF review.

The Utility's Reform Network (TURN) filed a comment on AL 22800 on April 22, 2002. TURN did not Protest the filing, but instead noted the potential need for a restatement of Pacific's Earnings Filings for the years 2000, and 2001 dependent on the outcome of the Commission's current NRF investigation. TURN contends that the Commission needs to have the most accurate information possible to ensure that rates are just and reasonable. If the Commission finds that Pacific has misreported sharable earnings in R.01-09-001/I.01-09-002, TURN believes that the Commission should require Pacific to resubmit earnings reports for the years 2000, and 2001.

Pacific filed a response to TURN's comment on April 29, 2002. In their response Pacific contended that addressing any other filing than the AL currently under consideration was improper, and that D.98-10-026 does not provide for any refiling of the sharable earnings AL. Pacific states that ordering such a refiling now would be a "significant and unjustified modification of the filing requirement in Ordering Paragraph 1.c. of D.98-10-026".

## **DISCUSSION**

D. 98-10-026 suspended sharing and reduced the annual sharable earnings filing to an information only rate of return report. Pacific has filed this advice letter within that context.

While ORA claims that it cannot verify Pacific's reported ROR without work papers and an audit, TD does not find any reason to reject the reported ROR at this time. TD is aware that the results of the NRF audit or any future audits may alter the ROR, but we feel that accepting it subject to any corrections or adjustments that may be appropriate as a result of any Commission decision, is sufficient to preserve the Commissions options. This is the same caveat that was given in last year's rate of return filing.

ORA's requests to order an audit of Pacific's ROR and lift the suspension of sharing are not appropriate to an AL filing. These issues will be addressed in the current NRF review. The request to create a memorandum account to record any earnings above the sharing band is accomplished by accepting Pacific's AL subject to any corrections or adjustments.

Accepting the ROR filing subject to any corrections satisfies TURN's concern that the Commission have accurate earnings information. Contrary to Pacific's assertions, requiring that Pacific update the Commission when its reported numbers change is neither significant nor unjustified. Submitting a change does not affect the nature of the filing or the impact to the company and correcting incorrect information is always justified.

The draft resolution of the Telecommunications Division in this matter was mailed to the parties in accordance with PU Code Section 311 (g)(1). Comments were filed on (date) by (names of parties) and reply comments were filed on (date) by (names of parties). [disposition of comments/revisions to draft resolution].

## **FINDINGS**

- 1) Advice Letter No. 22800 was filed in a timely manner.
- 2) Pacific Bell initially reported that for the year 2001 they earned a ROR of 12.48%
- 3) Pacific Filed a supplemental Advice Letter No. 22800A on June 13, 2002, and revised their reported intrastate ROR to 12.55%.
- 4) Timely protest to Advice Letter 22800 were filed by ORA. and TURN.
- 5) Sharing is currently suspended pursuant to D. 98-10-026.
- 6) An audit of the Company's books and records for the record period of 1997 through 1999 is included in the 4<sup>th</sup> Triennial NRF review.
- 7) The 4<sup>th</sup> triennial NRF review could possibly have an effect on the year 2001 results of operations.
- 8) Future dockets and Commission decisions could result in corrections or adjustments to the 2001 reported intrastate ROR.
- 9) The future of sharing (i.e. continued suspension, permanent elimination, reinstatement, or some other modification) will be an issue in the current NRF review.
- 10) The reference RORs are as follows:
  - Market-Based – 10%
  - Benchmark – 11.50% (+ 150 basis points)
  - Ceiling – 15% (+ 500 basis points)
  - Floor – 6.75% (- 325 basis points)

## **THEREFORE IT IS ORDERED THAT:**

1. Pacific's Annual Rate of Return Advice Letter for the year 2001 shall be accepted subject to any corrections or adjustments that may be appropriate as a result of any Commission decision.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on August 22, 2002. The following Commissioners approved it:

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WESLEY M. FRANKLIN  
Executive Director